



## South Dakota One Call Notification Board

Barry Engelbreth  
Executive Director

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Sioux Falls, SD 57110

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**TO: SOO SANITARY**

**FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

**RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;**

**In the Matter of the Complaint OC03-013 filed by Sioux Valley Energy against Soo Sanitary regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5.**

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against Soo Sanitary. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer this complaint in writing, no later than the close of business on **January 7, 2004**, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant.

South Dakota One Call Notification Board  
1012 N. Sycamore Avenue  
Sioux Falls, SD 57110-5747

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. copy of one call notification or confirmation number provided by the Center, witness statements, pictures, etc. We would encourage you to specifically address the alleged violation stated in the complaint - Failure to provide notification of the proposed excavation

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and associated response. Failure to respond to this notice will be considered as concurrence that the allegation included in the complaint is accurate. If probable cause is determined, the panel may recommend penalties under SDCL 49-7A-18 & 19. If any financial penalties are assessed in response to Complaint OC03-013, the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;
4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the committee when they consider this complaint.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.

A copy of the Operations Manual for Facility Operators and Excavators is enclosed. The South Dakota One Call Statute is reprinted in this manual starting on page 25 with the penalty section starting at the bottom of page 29. We would encourage you to review this material prior to completing your response.

Procedural questions may be directed to Larry Englerth, Executive Director to the South Dakota One Call Notification Board, at 605-339-0529 or by email to [exedir@sdonecall.com](mailto:exedir@sdonecall.com).

Enclosure

cc: Ray DeJong, Complainant – cover letter only

# COMPLAINT OC03-013

Complaint filed against Soo Sanitary by Sioux Valley Energy

This complaint involves one alleged violation:

- A. SDCL 49-7a-5 failure to provide proper notification of proposed excavation

## **§ 49-7A-5. Notification of proposed excavation.**

No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. The excavator shall give notice by telephone, facsimile, in person, or by other methods approved by the board pursuant to rules promulgated pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state, but not more than ten business days prior to any excavation. The board may promulgate rules to reduce the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request and may lengthen the forty-eight-hour interval for nonexcavation requests.

Process for the committee per discussion with legal

1. Determine if a violation occurred on OC03-013 , if probable cause is determined go to question 2; If no probable cause is determined the complaint will be sent to the involved parties with the determination and reason for the determination.
  - a. **§ 49-7A-25. Complaint, answer to be sole basis for probable cause determination.** A determination of probable cause shall be made by the panel solely on these submissions and no other evidence shall be considered.
  - b. **§ 49-7A-1. Definition of terms.** (3) "Excavation," any operation in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives, and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving...
2. Determine penalty based on SDCL 49-7A-18 utilizing the criteria established in SDCL 49-7A-26
  - a. **§ 49-7A-18. Penalties.** Except as provided in § 49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.
  - b. **§ 49-7A-26. Factors considered in determining amount of penalty.** The amount of recommended penalty shall be determined by a majority vote of the panel. Factors to be considered in determining the amount of the penalty shall be:

- i. The amount of damage, degree of threat to the public safety, and inconvenience caused;
- ii. The respondent's plans and procedures to insure future compliance with statute and rules;
- iii. Any history of previous violations;
- iv. Other matters as justice requires.

#### PENALTY CONSIDERATIONS

Amount of Damage		Appears minimal, safety of employees would be a factor 76 customers w/o power for 1/2 to 2 hours
Public Safety - degree of threat		
Public Inconvenience caused		
Plans for future prevention		
History of previous violations		None
Other Factors		None

Scale 1 least impact to 5 greatest impact

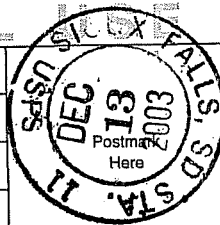
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Total Postage & Fees	\$ 488



Sent To	Dick Woelber
Street, Apt. No., or PO Box No.	Soo Sanitary 48414 Redrock Road,
City, State, ZIP+4	Valley Springs, SD 57068

PS Form 3800, June 2002

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Dick Woelber**  
**Soo Sanitary**  
**48414 Redrock Road,**  
**Valley Springs, SD 57068**

2. Article Number  
 (Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ X ☐ Agent  
☐ Addressee

B. Received by (Printed Name) *Colin Olson* C. Date of Delivery *12/13/03*

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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